

Final Minutes of the  
Employment Advisory Council Meeting – Approved on August 17, 2017  
Department of Workforce Services, 140 East 300 South, Salt Lake City  
**April 20, 2017 – 2:30 p.m.**

<b>Council Members Present:</b>	David Davis	Employer Representative, Utah Retail Merchants Association
	Greg Diven (via phone)	Employer Representative, OCM, Inc.
	John Chindlund	Employer Representative, Prince, Yeates & Geldzahler
	Richard Thorn	Employer Representative, Assoc. of General Contractors
	Jan Zogmaister	Public Representative
	Erin Trenbeath-Murray	Public Representative
	Ryan Mecham	Public Representative
	Dee Rowland (via phone)	Public Representative
	Diane Lewis	Employee Representative, Utah Laborer's Local #295
	Dale M. Cox	Employee Representative, Utah State AFL-CIO
	Dan Peay	Employee Representative, United Steelworkers, AFL-CIO
<b>Council Members Excused:</b>	Todd Bingham	Employer Representative, Utah Manufacturers Assn.
	Matt Minkevitch	Public Representative
	Tony Montano	Employee Representative, Utah State AFL-CIO
	William Nickell	Employee Representative, Utah Career Center
<b>DWS Staff Present:</b>	Nate McDonald	Assistant Deputy Director, DWS
	Michelle Beebe	Director, Unemployment Insurance
	Kathy Bounous	General Counsel, DWS
	Mike Miller	Chief, UI Contributions
	Bethany Hyatt	PIO, DWS Communications
	Martha Madariaga-Borden	Sr. Business Analyst, Unemployment Insurance
	Grazyna Janeczko	Auditor, Unemployment Insurance
	Steve Van Valkenargh	Employer Advocates, LLC
	Mary Gehman-Smith	Support Staff Supervisor, Unemployment Insurance, Minutes

Agenda Item	Discussion
Welcome and DWS Organizational Changes	Michelle Beebe welcomed the group and introduced Nate McDonald, DWS Assistant Deputy Director. Mr. McDonald is new to this position and has also been the Communication Director for the last three years. He is here today representing the Executive Director's office. Ms. Beebe referred to an organization chart dated April 3, 2017 (Attachment A). Mr. McDonald reported, in his new capacity, he supports the Veterans program, Employer Initiatives and STEM (Science, Technology, Engineering and Math). Employer initiatives are largely funded through the Special Admin. Fund based on penalties and interest collected on the Unemployment Insurance program. The monies collected from penalties and interest is reinvested in the economy with the authority of the Legislature to help create more jobs.
Approval of Minutes	Mr. McDonald called for a motion to approve the Minutes from the December 1, 2016 meeting; Ryan Mecham moved to accept the Minutes as written, John Chindlund seconded the motion and the motion carried.
UI Trust Fund and 2017 Employer Rates	<p>Ms. Beebe reported employers are currently in the midst of filing their quarterly reports for the January – March period. These are due to DWS by April 30, 2017. This is the first time employers are experiencing the new 2017 Contribution Rates. Last quarter, 91% of employers filed online.</p> <p>Ms. Beebe referred to the <b>UI Trust Fund</b>, which currently has a balance of \$991M, the healthiest it has been in 15 years. In June 2016, it was \$1M above the maximum level. Our formula is statutorily written to say if we get above the maximum level, the reserve factor decreases (it went from a 1.0 to a .95.) When we looked at that \$1M over the maximum and what it meant for Utah employers, we figured it was an average of \$29 per employer. Once the June 30, 2017 balance is available, we will determine how much above the maximum we are and how much that is per employer. This will be discussed at the August meeting.</p> <p><b>UI Trust Fund Balance Projections</b> (Attachment B). Looking beyond FY2017, it is possible if wages continue to increase at their current rate, eventually the blue minimum/maximum lines will increase to the point that we are no longer above the maximum but within the range as we are insuring more wages within the economy.</p> <ul style="list-style-type: none"> <li>Nationally, there are eight states considered to have an insolvent Trust Fund. 24 states are somewhere between insolvent and minimally solvent. Minimally Solvent is defined by the Department of Labor (DOL) as the State has enough money in their Trust Fund to pay at least one year's worth of benefits if they were to experience another recession. Utah is in a healthy place comparatively having the fourth healthiest Trust Fund in the nation.</li> </ul> <p><b>UI Trust Fund Reserve Factor and Social Cost Calculation</b> (Attachment C)</p> <ul style="list-style-type: none"> <li>Projecting ahead to 2018, the Reserve Factor is expected to be remain steady;</li> <li>75% of Utah employers currently qualify for the minimum rate of 0.2%, which equals \$66 per employee per year. The health</li> </ul>

of the trust fund doesn't mean anything to the employers that qualify for that minimum rate as they aren't paying for any recent unemployment experience;

- The remaining 25% of employers, that don't qualify for the minimum rate, will be impacted by the Trust Fund Reserve factor;
- Currently, the minimum rate is 0.2%, and there is a high chance that next year it will go down to 0.1%. This would reduce it from \$66 per employee to \$33 per employee. The biggest reason is that fewer employers are either going out of business or maxing out on their rate.

Mr. Davis asked if there is a floor on the reserve factor statutory formula. Can it continue to drop if we are above the maximum?

Ms. Beebe clarified that it can continue to drop in .05 increments. She will research what the lowest range it can drop and follow up with the Council.

Follow-up:

- *Employer contribution rates are calculated using three factors: (1) an employer's individual unemployment benefit experience compared to taxable wages, (2) multiplying by the reserve factor, and (3) adding on the social cost that is shared by all employers. About 75% of Utah employers do not have recent unemployment benefit experience and therefore qualify for the minimum rate which equals the social cost (0.2% on the first \$33,100 wages during CY 2017).*
- *According to Utah Ann. Code 35A-4-303, the reserve factor can vary between 0.50 and 1.50 according to the health of the trust fund. It is set at 1.0 if the balance falls within the minimum and maximum levels needed to pay elevated levels of benefits in the event of another economic downturn.*
- *The unemployment trust fund balance as of June 30, 2016 was \$972.5 million and the reserve factor for 2017 is 0.95 – meaning we're slightly above the maximum level as defined by Utah statute. For the reserve factor to drop to 0.50, the fund balance would need to be around \$1.4 billion. For the reserve factor to increase to 1.50, it would need to be around \$0."*

Ms. Beebe referred to the **Unemployment Insurance Contributions vs Benefits Paid (Attachment D)**

The green bars represent the balance of the Trust Fund. The blue lines represent the fluctuation of the amount of benefits paid year to year and the red dotted line is the amount of Contributions' that are collected. This chart shows the counter cyclical nature of the Trust Fund. The reason we maintain this relationship is we don't want tax rates to increase significantly in the midst of a recession. We try to have that delayed a few years after the economic recovery.

Ms. Beebe stated she recently attended the Governor's Economic Summit. At that Summit, Natalie Gochner provided a graph showing economic recovery and addressed the idea that Utah is due for another recession as enough years have passed, meaning every seven or eight years like clockwork, we should be entering into a recession. The graph she showed was the average amount of

time and the longest economic expansion in Utah (1991 – 2001). We currently haven't quite reached that economic expansion point but are currently above the average amount of time since the last recession. Mr. Thorn asked if she predicted when the bottom was going to fall. Ms. Beebe replied she didn't say.

Ms. Beebe stated the reasoning behind this is:

- 1) to ensure there is enough money in the UI Trust Fund to pay benefits to eligible individuals;
- 2) to ensure there is enough money in the Trust Fund to avoid major spikes in employer tax rates during recessionary years when it hurts the most to pay the taxes; and
- 3) to ensure there isn't too much money in the Trust Fund where money is arbitrarily being collected.

Mr. Davis commented he thinks the Department and the Council, in conjunction with the Legislature, did a good job setting up the statutory framework that keeps the fund healthy. It hasn't always been fun, but the formula worked well and kept Utah solvent when others were insolvent.

Mr. Mecham asked about the three states that are doing comparatively better than Utah. Ms. Beebe reported those states are Wyoming, Oregon and Mississippi.

Mr. Diven asked Ms. Beebe if she has any concerns regarding the number of benefits paid versus taxes collected as it appears the trend is moving downward. Ms. Beebe replied:

- Looking ahead at 2018, 2019 and 2020, a potential increase in contributions paid is projected;
- Depending on the rate that wages are growing, more wages will need to be covered under Unemployment Insurance;
- When we looked at the amount of benefits paid over the coming years, we relied on the Governor's Office of Management and Budget (GOMB) and what they predict the UI rate might be. It is expected to remain fairly stable, with a possibility of a slight increase in 2018, from 3.3% to 3.5% in terms of the unemployment rate.

Mr. Davis stated we want these two lines to be right on top of one another so we have enough to pay benefits but not take extra money out of the economy. As these are funded by employer dollars, if we over collect, there is an implication to the economy.

Mr. Thorn inquired about the following:

1. As the average wages are increasing; do we have a way to track that? Ms. Beebe replied Utah is one of a handful of states that indexes the unemployment benefit amount to the average wage in the State of Utah so it changes every year depending on that average wage. From 2016 to 2017, the wage base increased from 2.8%. Historically, we have seen it generally ranges from a 0.5% to a 3%;
2. Mr. Thorn asked what the current Utah unemployment rate is. 3.1% Unemployment rate;
3. How many construction workers are back to work? Ms. Beebe will do some research and report back to Mr. Thorn.

	<p>Ms. Beebe added this year, when reviewing the volume of claims (individuals calling into the Center, filing an unemployment claim and then going on to collect benefits), each October/November, like clockwork, we see a significant increase. It peaks in January and then gradually decreases until April/May. These trends are tracked on how fast the peak is reached and how fast it decreases back to normal levels. This year, we were on target, reaching the peak, however the recovery from the seasonal influx is happening faster than it has in past years. Mr. McDonald stated the latest unemployment insurance numbers will be available tomorrow.</p>
Legislative Summary for 2017	<p>Kathy Bounous, DWS General Counsel, reported the following from the 2017 Legislative session:</p> <p><b>Passed Legislation:</b></p> <ol style="list-style-type: none"> <li>1. <b>HB34 – Employment Security Act Sunset Extension</b> – the Act that authorizes DWS to share misclassified worker information with the DOL Wage and Hour Division was extended to July 1, 2019. Ms. Beebe added, to date, information has been shared twice. The Legislature is interested in evaluating this to see if it is a benefit to the state. Mr. Davis requested the Council be kept up to date on this process, as they are concerned with sharing with the DOL Wage and Hour Division, although it is only shared when there is an uncooperative employer. We are all for getting bad actors and malingerers out of the system. Mr. Cox stated fences were built to protect good employers, only those who have sunk to the bottom are being reported. Ms. Beebe added: <ul style="list-style-type: none"> <li>• From July 2015 – December 2016, of the 557 companies that were found to have misclassified workers; 163 had ten or more; 12 failed to cure the misclassification as defined within the statute and Administrative Rule;</li> <li>• This works out to 7.4% of employers with ten or more misclassified workers;</li> <li>• 2.2% of all audits that showed misclassified workers;</li> <li>• As expected, many employers don't understand the system and become compliant once they become aware. Just a small percentage fails to comply.</li> </ul> </li> <li>2. <b>HB272 - Regulatory Impact Amendments</b> – This requires agencies to perform an analysis on the fiscal impact to all businesses in the State before it is put out for public comment and finalized when they want to file/update an Administrative Rule. The Governor's Office of Management and Budget (GOMB) is required to set the criteria on how this will be done. The Legislature wants to ensure agencies understand the impact each rule has on businesses in the state. Anytime a new bill gets passed in session, if rulemaking is mentioned in the bill, we have 180 days to get these rules filed.</li> <li>3. <b>SB65 – Postal Facilities and Government Services</b>, sponsored by Senator Mayne. If Congress allows it, this bill allows State agencies in Utah to contract with the postal service to provide state agency services within their facilities. DWS does not have any plans to enter into these agreements.</li> <li>4. <b>SB71 – Criminal Accounts Receivable Amendments</b> – This creates criminal judgement accounts receivables, allows the courts to turn those into civil judgements then turn over to the Office of State Debt Collection. This could apply when UI processes criminal prosecution on customers. Ms. Beebe stated when UI overpayments are set up, few are considered fraudulent, however, when fraud is determined, UI has the statutory authority to take it to criminal prosecution. This Bill says in situations where it has been determined there is UI fraud, the amount the customer owes the agency could be referred to the Office of State Debt Collection. Historically, UI has elected not to do this, but to process internally, primarily as they require taking a fee</li> </ol>

off the top of the collection. UI's regulations require any money collected must be deposited into the Trust Fund.

**5. SB224 – DWS Amendments:**

- The Vocational Rehab Division's (one of USOR's Divisions) Rule Making Authority was obtained;
- Business Representatives to the Governor's Committee on Employment of People with Disabilities were added;
- The way in which the Qualified Emergency Fund is distributed was modified. The way it was structured in code was preventing us from distributing the funds being deposited every year from the general fund account. The bottlenecks were removed out of the code and we gave the flexibility to HCD to create Rules on how to disburse it. These funds go to food pantries;
- Extended the sunset on the Office of Rehabilitation Transition Account to July 2018;
- The Appeal Division's ability to set attorney fees was removed but they retained the ability to set fees on those who are representing clients who are not attorneys.

**6. SB249 - Tax e-Filing Amendments.** This requires all employers to file not only their annual W2 file, but also quarterly withholding returns to the Tax Commission in an electronic format. Currently, UI has 91% of employers filing electronically. We are looking for ways to increase participation. Mr. Davis asked if there is a point where we have what we are going to get. He thinks electronically filing is great but wants to see who the other 9% of employers look like and is curious to know why they aren't filing electronically. Ms. Trenbeath added the population that is aging out may have missed the technology bubble. There should be a natural attrition to using technology.

**7. SB194 – Utah Data Alliance** was not functioning very well, so it was moved into DWS and is now called the **Utah Data Research Center**. It will be created under the Workforce Research Analysis (WRA) Division, an Advisory Board will be created, and data will be collected and managed. The Center will receive and prioritize requests. The point is to inform public policy in the State. All the same partners will be involved but now it is within the Executive Branch.

**Bills that did not pass:**

- 8. HB14.** This would have required all Administrative Law Judges (ALJs) within the State to have a JD degree. Mr. Davis asked if the ALJs are held to the code of judicial conduct. Yes, they have to follow all the rules.
- 9. SB254 - Occupation Info Amendments** - Senator Stevenson's bill. This Bill would have required employers to report occupational codes to the UI Division. There was confusion on why it was being run, who was asking for it and it was never heard in Committee. DWS and the Governor's office were neutral. Ms. Zogmaister asked what the purpose was. Ms. Beebe replied the thought was if job titles were attached to hourly rates, the effect education is having on industry could be analyzed. This would have put a significant burden on employers to report this additional information and would have a significant fiscal impact to DWS as far as changing programming to accept this information. This issue comes up every couple of years. Right now, it has particular traction given the national atmosphere under the Workforce Information and Opportunity Act (WIOA). There are currently four or five states working to add occupational titles to wage records. Two states in the nation require occupational codes with wage records.

Mr. McDonald acknowledged Ms. Bounous and stated she does a phenomenal job of representing DWS on the hill.

Status Updates	<p><b><u>CUBS Modernization Project.</u></b> Major ICON release 04/12 (coordinating out of state, military, and federal civilian wage transfers); (2) Continued Claims release in Summer 2017; (3) Claims release in Fall 2017; (4) Appeals release in Spring 2018.</p> <p><b><u>Video for Employers</u></b> “The Role of Unemployment Insurance” – The Council was shown this video created for employers. A second video “Claims Filing Instructions” has been developed for claimants. There is not enough time to play this at today’s meeting.</p> <p><b><u>Debt Collection Information</u></b> –(Attachment E)</p> <p><b><u>Information Sharing with DOL WHD</u></b> (H.B. 65, 2015 Utah General Session) – Field Auditors provide employers <i>Resources for Utah Employers</i> (Attachment F).</p>
Major Activities within Workforce Services	<ol style="list-style-type: none"> <li>1. <b><u>Intergenerational Poverty (IGP)</u></b> - (Attachment G).</li> <li>2. <b>Talent Ready Utah</b>, Workforce Development is a key issue in Utah right now. This is an effort to bring all the players together.</li> <li>3. <b>LinkedIn and Utah Launch New Re-Employment Pilot Program (Attachment H).</b></li> <li>4. <b>NASWA presented the Utah UI system with an Outstanding Performance award yesterday for Handling Unemployment Insurance Claims through an electronic system.</b></li> </ol>
Other Business	Mr. McDonald reported Michelle Beebe will be leaving the Department in two weeks. The EDO is currently working on a transition plan. Ms. Beebe stated she has accepted a job within another State.
Next Meeting	The next meeting is scheduled for August 17, 2017.
Adjourn	Erin Trenbeath-Murray motioned to adjourn the meeting at 3:36 p.m. John Chindlund seconded the motion and the motion carried.